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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,661	01/29/2004	Michael Svilar	060021-378901	5386
29838 7590 08/05/2008 OPPENHEIMER WOLFF & DONNELLY, LLP PLAZA VII, SUITE 3300 45 SOUTH SEVENTH STREET MINNEAPOLIS, MN 55402-1609				
EXAMINER				
MCPHILLIP, ADRIAN J				
ART UNIT		PAPER NUMBER		
4176				
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08/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/767,661

**Applicant(s)**

SVILAR ET AL.

**Examiner**

Adrian J. McPhillip

**Art Unit**

4176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_

### DETAILED ACTION

1. The following is a non-final, first office action on the merits. Claims 1-24 are pending.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-4, 6-8, 12-16, 18-20, and 24 are rejected under 35 U.S.C. 102(a) as being anticipated by Schroeder et al. (US 2003/0130883).

As per **claims 1 and 13**, Schroeder et al. discloses a method and system for using econometric techniques to quantify marketing drivers and forecast at least one of consumer demand and shipments comprising:

- providing at least one marketing plan, wherein the at least one marketing plan comprises at least one marketing element (see paragraphs 57-58 and fig 1 wherein proposed promotions/marketing plans are entered into the modeling system);
- using econometric modeling to quantify the effect of marketing elements on shipments (see paragraph 50 wherein the predicted effects of the promotion in question are determined and include an analysis of expected ship quantities. Furthermore paragraph 39 discloses using regression as a method of analyzing the data in question); and

- forecasting at least one of consumer demand and shipments in response to the at least one marketing plan and results of the econometric modeling (see paragraph 73 wherein the business planner builds shipment estimates and predicts supply chain demand related to the implementation of a particular promotion).

As per **claims 2 and 14**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments, wherein the shipments are defined by at least one of consumer demand and anticipated retail load adjustments (see paragraph 102 wherein replenishment orders and shipping are driven by consumer demand as well as both sales and system forecasts).

As per **claims 3 and 15**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments, further comprising determining at least one of demand forecast error and shipment forecast error (see paragraph 42 wherein the system allows the user to minimize the risk of the prediction to achieve an acceptable level of error).

As per **claims 4 and 16**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments further comprising calculating a lift parameter of the at least one marketing element (see fig 1 and 2 wherein a lift model calculates the predicted lift that should result from a particular promotion and also paragraph 58).

As per **claims 6 and 18**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments further

comprising enabling a user to input marketing spend data and the at least one marketing element (see paragraph 29 wherein the information utilized in the analysis of a promotion includes the cost of the promotion).

As per **claims 7 and 19**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments wherein the at least one marketing element comprises at least one of promotions, advertising, points of distribution and product changes (see figs 1-2 and paragraphs 18-28 wherein the marketing element being analyzed is disclosed to be a promotion).

As per **claims 8 and 20**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments further comprising modifying the at least one marketing plan based on the forecasting (see paragraph 77 wherein the event scenario/promotion being analyzed by the system may also be aligned with other aspects of the retailer promotion calendar. For example, if the retailer is planning a major promotion of a competitive product during one time period, the manufacturer may need to adjust the timing of a planned promotion accordingly. Also one embodiment allows the user to compute the impact of modifications to the promotion plans).

As per **claims 12 and 24**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments further comprising executing the at least one marketing plan (see paragraph 77 wherein the system selects the most favorable promotional scenarios which are integrated with the promotional calendar for execution).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al. (US 20030130883 A1) in view of Lee et al. (US 5712985 A).

As per **claims 5 and 17**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments but fails to explicitly teach generating at least one report that indicates at least one of consumer demand forecast error, and shipment forecast error.

Lee et al., however, does disclose recording, or creating a report of, the differences between the predicted demand for a business item and the actual demand for that item (see column 3, lines 54-64).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the reference of Schroeder et al. to include generating a report of the differences between predicted and observed demand in order to increase the accuracy of future predictions and enhance the effectiveness of the overall model. Since both references are interested in accurately forecasting demand and since the modification could have been performed readily and easily by one of ordinary skill in the art, with neither undue experimentation nor risk of unexpected results, a rejection under 35 U.S.C 103(a) is appropriate.

7. Claims 9-11 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al. (US 20030130883 A1) in view of Cox et al. (US 20020143604 A1).

As per **claims 9-11 and 21-23**, Schroeder et al. discloses a method and system to quantify marketing drivers and forecast at least one of consumer demand and shipments but fails to explicitly teach tracking the reasons for the forecast errors along with the forecast errors themselves.

Cox et al., however, discloses tracking the accuracy of a predictive model to assess its effectiveness as well as refining model assumptions (see paragraph 128), which are the reasons for the solution that the predictive model comes to. Therefore Cox et al. effectively discloses tracking the errors, in the form of the differences between the predicted and actual values, as well as tracking and eventually refining the reasons for the errors, in the form of the assumptions used by the model to arrive at its predictions.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the method of Schroeder et al. to include tracking the reasons for the forecast errors along with the forecast errors themselves in order to increase the accuracy of future predictions and enhance the effectiveness of the overall model. Since both references are interested in accurately forecasting demand and since the modification could have been performed readily and easily by one of ordinary skill in the art, with neither undue experimentation nor risk of unexpected results, a rejection under 35 U.S.C 103(a) is appropriate.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shipman (US 5819232 A) discloses a method and apparatus, using a computer model, to control a manufacturing or distribution process, which determines a demand forecast by using an optimized historical weighting factor.

Snyder et al. (US 20040162768 A1) discloses systems and methods for vendor managed inventory (VMI) that include a demand management system that receives customer product usage data and forecasts customer demand for products in accordance with the product usage data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adrian J. McPhillip whose telephone number is (571) 270-5399. The examiner can normally be reached on Monday to Thursday 7:30 - 5:00 EST.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/A. J. M./  
Examiner, Art Unit 4176  
7/22/08

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
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